

### **REMARKS**

In response to the Examiner's objection to the specification, a new abstract has been entered. In response to the Examiner's objection to claims 1-37, the claims have been amended to recite "An apparatus" rather than "Apparatus." In response to the Examiner's rejection of claims 1-37 under 35 U.S.C. § 112 as indefinite, the claims have been amended to clarify that Applicant is not claiming the portal and to clarify the "means" elements. Claim 14 has been amended to independent form. New claim 38 has been added.

### **35 U.S.C. § 102 Rejection**

In response to the Examiner's rejection of claims 1-8, 11-13, 26-28, and 32-34 under 35 U.S.C. 102(b) as anticipated by Allen, the Applicant respectfully traverses. According to patent law, anticipation under § 102 "requires the presence in a single prior art disclosure of each and every element of a claimed invention." Lewmar Marine, Inc. v. Barient, Inc., 827 F.2d 744, 747, 3 U.S.P.Q.2d 1766, (Fed. Cir. 1987). Further, "every element of the claimed invention must be identically shown in a single reference." Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 677, 7 U.S.P.Q.2d 1315, (Fed. Cir. 1988).

Independent claims 1, 26, and 32 in the instant application each recites an elongated rod having a magnetic member mounted to each opposing end of the rod to hold each end of the rod against a lateral margin. Allen does not teach this limitation or anything equivalent thereto. Rather, Allen teaches a flexible magnetic strip (28) along each side of the curtain for attaching the curtain sides to the lateral margins. Since Allen does not teach or suggests an elongated rod having a magnetic member mounted to each opposing end of the rod to hold each end of the rod against a lateral margin and this limitation is recited in independent claims 1, 26, and 32, the § 102 rejection must be withdrawn.

### 35 U.S.C. § 103 Rejection

In response to the Examiner's rejection of claims 9-10 under 35 U.S.C. § 103(a) as being unpatentable over Allen in view of Mozis et al, the rejection of claims 1-8 and 11-37 under 35 U.S.C. § 103(a) as being unpatentable over Crider et al in view of Allen, and the rejection of claims 9-10 under 35 U.S.C. § 103(a) as being unpatentable over Crider et al in view of Allen and further in view of Mozis et al, the Applicant respectfully traverses.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992); MPEP 2143.01. Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986); MPEP 2143.02. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP 2143.03. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See also MPEP 706.02(j) and 2143.

Accordingly, to support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. Ex parte Clapp, 227 USPQ 972 (Bd. Pat. App. & Inter. 1985). See also MPEP 706.02(j). However, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Further, it is impermissible to use the claimed invention as an instruction manual or template to piece together

the teachings of the prior art so that the claimed invention is rendered obvious: “[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.” In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). See also MPEP 2143.01.

In the rejection of claims 9-10 under 35 U.S.C. § 103(a) as being unpatentable over Allen in view of Mozis et al, the Examiner has relied upon Allen as the principal reference and states that Allen teaches the claimed apparatus except for the pairs of cylindrical magnets including spacer members therebetween. The Examiner then relies on Mozis et al to supply the missing elements. However, Mozis et al teach a “cow magnet” for ingestion by a ruminant animal for attracting and holding ingested metal objects within the stomach of the animal to avoid injury to the animal. The Examiner has failed to show how Mozis et al suggest modifying Allen to arrive at the present invention, but rather, just arrives at this conclusion. This is improper hindsight reconstruction. Further, Mozis et al is non-related art and should be withdrawn as a reference. Thus, the § 103 rejection should be withdrawn.

In the rejection of claims 1-8 and 11-37 under 35 U.S.C. § 103(a) as being unpatentable over Crider et al in view of Allen, the Examiner has relied upon Crider et al as the principal reference and states that Crider et al teach the claimed apparatus except for the means for urging the pocket towards the lateral margins including magnetic means. The Examiner then relies on Allen to supply the missing elements. However, while Allen teaches a magnetic feature for sealing the curtain against the lateral margins, Allen teaches away from the present invention inasmuch as Allen teaches a flexible magnetic strip (28) along each side of the curtain for attaching the curtain sides to the lateral margins. The instant invention has an elongated rod having a magnetic member mounted to each opposing end of the rod to hold each end of the rod against a lateral margin. Allen does not teach or suggests an elongated rod having a magnetic member mounted to each opposing end of the rod to hold each end of the rod against a lateral margin and this limitation is recited in independent claims 1, 14, 26, 29, 32, 35, and 38. The

Examiner has failed to show how Allen suggests modifying Crider et al to arrive at the present invention. Thus, the § 103 rejection should be withdrawn.

In the rejection of claims 9-10 under 35 U.S.C. § 103(a) as being unpatentable over Crider et al in view of Allen and further in view of Mozis et al, the Examiner has relied upon Crider et al and Allen as the principal references and states that Crider et al in view of Allen teach the claimed apparatus except for the pairs of cylindrical magnets including spacer members therebetween. The Examiner then relies on Mozis et al to supply the missing elements. However, Mozis et al teach a "cow magnet" for ingestion by a ruminant animal for attracting and holding ingested metal objects within the stomach of the animal to avoid injury to the animal. The Examiner has failed to show how Mozis et al suggest modifying Crider et al in view of Allen to arrive at the present invention, but rather, just arrives at this conclusion. This is improper hindsight reconstruction. Further, Mozis et al is non-related art and should be withdrawn as a reference. Thus, the § 103 rejection should be withdrawn.

### **Conclusion**

In light of the foregoing amendments and remarks, the Applicant respectfully requests that the Examiner withdraw the rejections and objections and allow all the pending claims.

Respectfully submitted,



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